

TEXAS LAW & BILLS RELATED TO THE PROVISION OF HEALTHCARE TO ANIMALS IN PUBLIC, NON-PROFIT, AND FOR-PROFIT ANIMAL SHELTERS

Summary:

- Current Texas law allows veterinarians and shelter employees to provide necessary vaccines and healthcare to animals under the so-called “owner exemption” to the Texas Occupations Code.
- The Texas Board of Veterinary Medical Examiners (TBVME), a state agency, wants to dramatically increase regulations and regulatory burdens on shelters, their employees, and veterinarians by overturning the “owner exemption.”
- Two pending bills relate to this issue. Representative Eddie Rodriguez’s bill largely confirms the status quo, allowing shelters to provide necessary care to animals. Representative Larson’s bill overturns the “owner exemption” for shelters, thereby imposing a dramatic expansion of bureaucratic regulations and burdens on shelters, increasing costs, and discouraging the provision of care to animals in shelters. Representative Larson’s bill would also ban shelters and veterinarians from providing any treatment or even pain relief to injured animals (such as those hit by cars or with open wounds) during a three-to-five-day statutory hold period, if any.

Current Texas Law

- The Occupations Code, along with a large number of rules adopted by the Texas Board of Veterinary Medical Examiners (TBVME), a state regulatory agency, imposes significant and burdensome regulatory obligations on persons providing any healthcare to animals in Texas. These obligations contemplate a private-practice setting where clients take their pets into an independent, fee-for-service animal clinic.
- There are important and substantial statutory exceptions. The Texas Legislature saw fit to exclude a number of persons and activities from the Code and the regulatory burdens imposed by the state regulatory agency.
 - One large exclusion from the TBVME’s regulations and rules is the so-called “ag exemption,” which removes from the TBVME’s regulatory authority the provision of care to animals in the agricultural industry because requiring individualized care by a veterinarian for every animal in a herd is not economically feasible.
 - A second large exclusion from the bureaucratic regulations and rules is the so-called “owner exemption,” which excludes from government regulation the provision of healthcare by an animal’s owner, an

employee of the owner, or a “designated caretaker” of the animal. This is a common exemption across the United States, is found in the model veterinary practice act, and is understood everywhere to exclude animal shelters from expensive regulatory burdens otherwise imposed, which do not make sense in the shelter environment where “herd health” practices are implemented and all of the animals are owned by the shelter and cared for by shelter employees and volunteers at the direction of the shelter/owner.

- Current TVBME regulations and requirements do not make sense in the shelter context. These include, but are not limited to:
 - the requirement that a veterinarian establish a personal relationship with the animal’s owner, and a physical relationship with each individual animal, before providing any care or advice regarding the animal. This does not make sense in the shelter context, where the shelter is the owner and it is a near impossibility for a veterinarian to be on staff 24/7 when animals need care.
 - non-veterinarians providing healthcare for animals must be employed and paid directly by the veterinarian (not any corporate, non-profit, or municipal entity). Again, this would not make any sense in the shelter context, where the employees work for the shelter (profit, non-profit, or municipality), not the veterinarian.
 - the imposition of responsibility (subject to discipline) on any veterinarian who volunteers, works for, or contracts at a shelter for all healthcare activities ongoing in the shelter environment, thereby heavily discouraging veterinarians from providing needed much-needed medical care to animals in the shelter environment.
- The “owner exemption” does not prevent the enforcement of other laws pertaining to animals and controlled substances. As a result, animal-cruelty laws and pharmaceutical laws remain in force and effect in the shelter environment.

Shelter Practice Background & Events

- For decades, Texas shelters have operated under the understanding that once a local governing body's statutory hold period (if any) has expired, the shelters become the owner of the animals and are thereafter protected by the "owner exemption" in the Occupations Code—meaning that their conduct falls outside the regulatory and bureaucratic rules imposed by the Code or adopted by the TBVME.
- In 2012, the TBVME publicly acknowledged that shelters are excluded from their rules and the Code's requirements once the hold period (if any) expires.
 - In their publication in Fall 2012, called *Board Notes*, the TBVME announced: **"After the time period for holding the animal has elapsed, usually three days and set by local ordinance, then the shelter may claim the animal is abandoned and the shelter is the owner. Under Texas law, an animal's owner or a caretaker designated by the owner can perform acts of veterinary medicine on the animal without involving a veterinarian and without concern for establishing a veterinarian-client-patient relationship, because the owners and caretakers are exempt from the Veterinary Licensing Act. Until that point, in order to perform veterinary services on that animal, including rabies vaccinations, a veterinarian must conduct an examination on that animal to establish a veterinarian-client-patient relationship."**
- More recently, the TVBME has told municipal shelters that they may also exclude themselves from the Code and regulatory rules during the initial hold period, if any, by having their city or county governing body pass an ordinance designating the shelter and its employees and volunteers as "designated caretakers" of the animals. Based on this TVBME advice, cities like San Antonio, Houston, and Austin (among others) have passed these ordinances and protected themselves from the substantial regulatory burdens imposed by the agency and Code during the initial hold period, if any.

The TVBME Ignores the Law:

- For reasons that are not clear, the TVBME has recently decided that it does not agree with the Texas Legislature's owner exemption and has begun prosecuting shelter veterinarians for alleged violations of the Code and agency regulations. Many of these allegations are untrue and are advanced by PETA volunteers who lied to gain access to shelter medical areas. The TVBME has used these untrue allegations to claim a need for a dramatic expansion of their bureaucratic authority.

- The TVBME’s lawyers have indicated that they would rather lose in court than admit what the law says and abide by it.
- In 2014, a Texas trial court held that the owner exemption does protect veterinarians employed by shelters from the Code and agency regulations except those related to controlled substances. In other words, the court held that the “owner exception” protects veterinarians from burdensome regulations but does not allow them to violate state laws related to controlled pharmaceuticals.

The TVBME Wants the Law Changed:

- The TVBME has repeatedly indicated that they planned to ask the Legislature to change Texas law so that they can impose burdensome regulations on shelters, making it nearly impossible for public and private shelters to continue to save lives under current budgets.
- The TVBME, along with the TVMA (Texas Veterinary Medical Association), have sought a bill sponsor to impose regulatory burdens on shelters.

The Two Bills:

- There are currently two bills filed to deal with this issue, one by Representative Rodriguez (Austin) and another by Representative Larson (San Antonio).
- The Rodriguez bill is designed in large part to confirm the status quo ruling of the Texas trial court—i.e., that shelter veterinarians and shelter staff are excluded from the costly regulatory burdens imposed by the Code and agency regulations, which do not make sense in the shelter environment.
 - The Rodriguez bill expressly excludes surgery (meaning that a non-veterinarian may not conduct surgery on an animal) and requires shelters to provide care under the supervision of or pursuant to a protocol written by a veterinarian. In those ways, it affords more protection than the status quo, but largely keeps the law the same as it is now.
 - Under the Rodriguez bill, all other laws and regulations would continue to apply in the shelter context, such as animal-cruelty laws and controlled-substance laws.
- The Larson bill is nearly the opposite of the Rodriguez bill. The Larson bill expressly overrules the owner exemption for shelter veterinarians. It then excludes from the Code and agency rules (1) intake vaccines; and (2) intake parasite control. All other agency and Code regulatory burdens would apply

to shelters for the first time under the Larson bill, driving up taxpayer and donor costs dramatically.

- The Larson bill has many negative unintended consequences, including:
 - Banning shelters and veterinarians from providing any pain relief to injured animals during a statutory hold period, if any. This means dogs or cats hit by a car with broken bones or open wounds would have to suffer without pain medication for three to five days in shelters, effectively mandating animal cruelty.
 - Imposing extremely expensive regulatory burdens on governmental, non-profit, and for-profit shelters.
 - If shelters want to provide even the most basic medical care after intake, that care will have to be performed by a veterinarian or by an employee of the veterinarian (not by a shelter employee).
 - Non-veterinarian shelter employees will not be able to provide any basic treatment to animals, such as over-the-counter medications, ringworm baths, upper-respiratory-infection antibiotics, non-narcotic pain medicines, etc.
 - Volunteers, which shelters in Texas heavily rely on, will no longer be able to provide any medical care to animals—even under the supervision and instructions of a veterinarian.
 - Pet foster parents will not be able to provide any care to animals—even under the supervision and instructions of a veterinarian.
 - Shelters will not be allowed to provide any care or treatment at all to sick or injured animals (including pain medication) after intake but before the statutory hold period (if any) expires. Effectively, this will mandate animal cruelty for sick and injured animals.
 - Texas veterinarians who currently assist (many for limited or no compensation) will be heavily discouraged from providing care to animals at shelters, thereby reducing the amount of care given to animals in shelters.
- Under the Larson bill, shelters would be forced to either (1) increase costs dramatically; (2) euthanize hundreds or thousands of additional animals; or (3) leave animals to suffer in shelters without medical care during their shelter stay.
- The Larson bill in its current form would impose a massive unfunded mandate on local governments that, under local control, wish to save rather than euthanize impounded animals.